

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**COLONY INSURANCE
COMPANY,**

Plaintiff,

vs.

**BIG TIME “WINGS” SPORTS
GRILL, INC., d/b/a BIGTIME
WINGZ SPORTS GRILL, *et al.*,**

Defendants.

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Case No. 2:07-cv-680-MEF

MOTION TO DISMISS

COMES NOW Plaintiff, Colony Insurance Company (hereinafter "Colony"), and hereby moves the Court to dismiss this action pursuant to Fed. R. Civ. P. 41(a)(2). Colony respectfully submits this Motion on the following grounds:

1. This Declaratory Judgment action was filed on July 26, 2007, by Colony against Big Time “Wings” Sports Grill, Inc. d/b/a Bigtime Wingz Sports Grill (“Big Time”), Stephen Brock (“Brock”), Charles W. Goggins (“Goggins”), and Carlos A. Ortega, Jr., (“Ortega”).
2. Ortega is the plaintiff, and Brock, Big Time, and Goggins are defendants, in an action filed in the United States District Court for the Middle District of Alabama styled *Carlos A. Ortega, Jr. v.*

Stephen Brock, et al., Case No. 2:07-cv-368-MHT (“Underlying Action”).

3. The Underlying Action made the basis of this Declaratory Judgment action has reached a settlement agreement.
4. Defendants Big Time and Ortega consent to the dismissal of this action, without taxation of costs. The remaining defendants, Goggins and Brock, were served but never entered an appearance in this case.

WHEREFORE, Plaintiff requests that this Court enter an Order dismissing this Declaratory Judgment action in its entirety, with prejudice, each party to bear its own costs.

/s/ Bethany L. Bolger
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April 2008, I served a copy of the foregoing upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed:

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